IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6694 of 1990

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL KELAVANI MANDAL

Versus

G H MAKATI

Appearance:

Ms.M.N. Kerawala, with MR BP TANNA for Petitioners
M/S TRIVEDI & GUPTA for Respondent No. 1
MR JR NANAVATI for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE C.K.THAKKAR

Date of decision: 17/02/2000

ORAL JUDGEMENT: (Per C.K. Thakkar, J.)

1. This petition is filed for an appropriate writ, direction or order, declaring Section 8 of the Gujarat Affiliated Colleges Services Tribunal Act, 1982 as ultra vires Article 14 of the Constitution of India.

2. The case of the petitioners, in short, is that respondent No.1, who was serving as Principal in Manjibhai Mavjibhai Ghodasar Mahila....

College, Junagadh, was removed from service. The said removal was, however, not approved by the Vice Chancellor, respondent No.2, and the order of removal was set aside. Being aggrieved by the said order, the present petition is filed by the petitioners.

3. It appears that at the time of admission of the petition, ad interim relief was granted by a Division Bench. The said order reads as under :-

> "... Rule. By way of ad interim relief the petitioners are directed to continue to pay to respondent No.1 his salary as and when the same becomes due. It is clarified that it will be open to the petitioners not to permit respondent No.1 to work as Principal .... "

Today, the matter is called out for final hearing.

4. On behalf of the learned counsel for the petitioners, it was stated that during the pendency of the petition, the respondent No.1 died. It was, therefore, specifically stated that in view of death of respondent No.1, the Management is not interested in prosecuting the matter any further and in getting the order set aside.

5. It was, however, submitted that in view of the fact that as per the order passed by this Court, the amount of salary has been paid to respondent No.1 (since deceased), the State Government may be directed to reimburse the said amount to the Management. In the instant case, the State Government is not a party-respondent.

6. Our attention was, however, invited to a letter
....

Education, wherein it was stated that though the Honourable High Court had granted interim relief, the

matters, viz., Special Civil Application Nos.6602 of 1990 and 6694 of 1990 (the present petition), were to be disposed of within a period of six months and if they would not be disposed of within a period of six months, the liability to pay salary of respondent No.1 would be of the Management. It appears that, being aggrieved by the said communication, the Management filed a petition, being Special Civil Application No.3849 of 1992, which came up for hearing before a Single Judge on June 14, 1994. The said letter of the Director of Higher Education was set aside by the learned Single Judge.

7. In paragraph 3, it was observed as under :-

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> "... 3. In the letter, it is also stated that on and from 1.10.1992 if the aforesaid petitions are not disposed of, the responsibility to pay the salary to respondent No.1 shall be that of the petitioners only and the government will have nothing to do with it. In other words, the government is putting its own interpretation on the consequences that are following from the order of this court. Obviously, this cannot be done. Nor could respondent No.3, through the said office of the Director can pressurize the petitioners to deal with a pending petition in a particular manner. Obviously therefore, this direction could not have been issued and, therefore, the petition deserves to be allowed. Accordingly, the order dated 30th April, 1992 is quashed and set aside. The petitioner shall continue to pay salary as per the said earlier order of the division bench. Rule is made absolute accordingly .... "

It was, therefore, submitted that when the State Government was a party to Special Civil Application No.3849 of 1992 and the letter / communication dated 30th April, 1992, was quashed and set aside by the learned Single Judge of this Court, it is obligatory on the part of the State Government to pay the amount which has been paid by way of salary to respondent No.1.

8. Since in present proceedings, the State Government is not a party, no writ can be issued to the State Government. It is, however, clarified that it is open to the petitioners to approach the State Government

and to invite the attention of the State Government to a letter dated 30th April, 1992, which was set aside by the learned Single Judge in Special Civil Application No.3849 of 1992 on June 14, 1994, and to make appropriate prayer on that basis. It is also open to the Management to take appropriate proceedings if the decision of the State Government is adverse to the petitioners.

9. So far as payment of salary to respondent No.1-Principal is concerned, in view of the statement that the Management does not press that relief, nothing requires further. Regarding pensionary benefits to the heirs of deceased respondent No.1 are concerned, it is open to the heirs of respondent No.1 to make an appropriate application for the said relief. As and when such application will be made, it will be decided on its own merits.

10. For the aforesaid reasons, this Special Civil Application deserves to be disposed of and is accordingly disposed of. Rule is discharged. Ad interim relief is vacated. No order as to costs.

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(apj)